

1 (December 2, 2002)

2 **Indian Preference And Tribal Ordinances**

3 This project is located on the \*\*\* \$\$1\$\$ \*\*\*. It is the Contractor's responsibility to contact  
4 the person and/or office listed in this special provision to determine whether any tribal  
5 laws or taxes apply. If the tribal laws and taxes do apply, the Contractor shall comply  
6 with them in accordance with Section 1-07.1.

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8 Tribal Employment Rights Ordinances (TEROs), may utilize a variety of tools to  
9 encourage Indian employment. These tools may include, but are not limited to, TERO  
10 fees, Indian hiring preference, Indian-owned business subcontracting preference and/or  
11 an Indian training requirement. Other requirements may be a Tribal business license, a  
12 required compliance plan and/or employee registration requirements. Every tribe is  
13 different and each may be willing to work cooperatively with the Contractor to develop a  
14 strategy that works for both parties. For specific details, the Contractor should contact  
15 \*\*\* \$\$2\$\$ \*\*\*.

16  
17 The state recognizes the sovereign authority of the tribe, supports the tribe's efforts to  
18 enforce its rightful and legal ordinances and expects the Contractor to comply and  
19 cooperate with the tribe. The costs related to such compliance shall be borne solely by  
20 the Contractor, who is advised to contact the tribal representative listed above, prior to  
21 submitting a bid, to assess the impact of compliance on the project.

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23 Although Indian preference cannot be compelled or mandated by the Contracting  
24 Agency, there is no limitation whereby voluntary Contractor or subcontractor initiated  
25 preferences are given, if otherwise lawful. 41 CFR 60-1.5(a)6 provides as follows:

26  
27 Work on or near Indian reservations --- It shall not be a violation of the equal  
28 opportunity clause for a construction or non-construction Contractor to extend a  
29 publicly announced preference in employment to Indians living on or near an Indian  
30 reservation in connection with employment opportunities on or near an Indian  
31 reservation. The use of the word *near* would include all that area where a person  
32 seeking employment could reasonably be expected to commute to and from in the  
33 course of a work day. Contractors or subcontractors extending such a preference  
34 shall not, however, discriminate among Indians on the basis of religion, sex, or tribal  
35 affiliation, and the use of such a preference shall not excuse a Contractor from  
36 complying with the other requirements as contained in the August 25, 1981  
37 Department of Labor, Office of Federal Contract Compliance Programs,  
38 Government Contractors Affirmative Actions Requirements.